

HONORABLE MICHELLE L. PETERSON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WILD FISH CONSERVANCY,

Plaintiff,

v.

BARRY THOM, in his official capacity as  
Regional Administrator for the National  
Marine Fisheries Service, *et al.*,

Defendants,

and

ALASKA TROLLERS ASSOCIATION,

Defendant-Intervenor.

Case No. 2:20-cv-00417-RAJ-MLP

PLAINTIFF'S RESPONSE TO  
DEFENDANTS' MOTION FOR  
EXTENSION ON ADMINISTRATIVE  
RECORD AND LEAVE TO LODGE  
RECORD OUTSIDE OF CM/ECF

Plaintiff Wild Fish Conservancy ("Conservancy") hereby respectfully responds to Defendants' Motion for Extension on Administrative Record and Leave to Lodge Record Outside of CM/ECF, Dkt. No. 48 ("Motion").

The Conservancy does not oppose entry of an order requiring Federal Defendants to submit the administrative record by June 15, 2020 and allowing for the record to be lodged outside of the Court's electronic case filing system. The Conservancy provides this response to briefly address certain assertions in Federal Defendants' Motion and to request that the Court's

RESPONSE TO DEFENDANTS' MOTION  
ON THE ADMINISTRATIVE RECORD - 1  
Case No. 2:20-cv-00417-RAJ-MLP

KAMPMEIER & KNUTSEN PLLC  
221 S.E. 11th Avenue, Suite 217  
Portland, Oregon 97214  
(503) 841-6515

CORR CRONIN, LLP  
1001 Fourth Avenue, Suite 3900  
Seattle, Washington 98154  
(206) 625-8600

1 order on the Motion also require that: (1) Federal Defendants provide electronic copies of the  
 2 administrative record to the Conservancy and Intervenor on June 15, 2020; and (2) the parties  
 3 confer and jointly file statements on proposed briefing schedules for dispositive motion practice  
 4 within fourteen days of submission of the administrative record.

5 Under LCR 79(h), Federal Defendants were required to file the administrative record  
 6 with their Answer on May 22, 2020 absent a showing of good cause warranting an extension.  
 7 While Federal Defendants represented during oral argument on May 28, 2020 that they have a  
 8 different interpretation of that Rule, they now indicate that the failure to timely submit the record  
 9 or seek an extension was due to “an oversight.” Dkt. No. 48 at 2.

10 If this action were to be reviewed under 16 U.S.C. § 1855(f), as Federal Defendants have  
 11 incorrectly argued, the administrative record was due on May 7, 2020. 16 U.S.C. § 1855(f)(3)(B)  
 12 (record due 45 days after service on the Secretary of Commerce); Dkt. No. 9 at 8 (Secretary of  
 13 Commerce was served on March 23, 2020). Federal Defendants assert that their effort to apply  
 14 the 30-day limitations period of 16 U.S.C. § 1855(f)—the Magnuson Steven Act’s provision  
 15 governing judicial review of regulations—would not also require that they expedite submission  
 16 of the administrative record as required under that provision. Dkt. No. 48 at 2 n.1. This  
 17 unexplained and unfounded effort to selectively apply some provisions of 16 U.S.C. § 1855(f),  
 18 but not others, to some of the relief requested, but not others, suggests that Federal Defendants  
 19 have all but abandoned any genuine argument that those judicial review provisions apply at all.  
 20

21 The Conservancy objects to Federal Defendants’ failure to timely provide the  
 22 administrative record in this matter. Given that failure, the Conservancy does not oppose entry of  
 23 an order requiring Federal Defendants to submit the administrative record as soon as practicable  
 24 and no later than June 15, 2020.

25 The Conservancy intends to continue to seek an expeditious review of this matter given  
 26 the ongoing and cumulative harm caused by the challenged actions and the perilous state of the  
 27 species involved. To that end, the Conservancy respectfully requests that the Court’s order on the  
 28

1 Motion clarify that Federal Defendants must provide all parties with a copy of the administrative  
2 record at the time it is lodged with the Court on June 15, 2020. The Conservancy will then be  
3 able to promptly evaluate the effort needed to review the complete administrative record and  
4 prepare its opening brief. The Conservancy requests that the Court's order on the Motion further  
5 require that the parties confer and jointly file statements on proposed briefing schedules for  
6 dispositive motion practice within fourteen days of submission of the administrative record.  
7

8 Respectfully submitted this 3rd day of June, 2020.

9 KAMPMEIER & KNUTSEN, PLLC

10 By: s/ Brian A. Knutsen

11 Brian Knutsen, WSBA No. 38806

12 Emma Bruden, WSBA No. 56280

13 221 S.E. 11th Avenue, Suite 217

14 Portland, Oregon 97214

15 Tel: (503) 841-6515 (Knutsen)

(503) 719-5641 (Bruden)

16 Email: brian@kampmeierknutsen.com

emma@kampmeierknutsen.com

17 Paul A. Kampmeier, WSBA No. 31560

18 811 First Avenue, Suite 468

19 Seattle Washington 98104

20 Tel: (206) 858-6983

21 Email: paul@kampmeierknutsen.com

22 CORR CRONIN, LLP

23 Eric A. Lindberg, WSBA No. 43596

24 Benjamin C. Byers, WSBA No. 52299

25 1001 Fourth Avenue, Suite 3900

26 Seattle, Washington 98154

27 Tel: (206) 625-8600

28 Email: elindberg@corrchronin.com

bbyers@corrchronin.com